

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

NOTICE OF PROPOSED RULEMAKING

Lake County Scenic Corridor Rules, 2000

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to adopt the following new sections of Title 14 of the California Code of Regulations (14 CCR):

§ 945	<u>Lake County Rules</u>
§ 945.1	<u>Statement of Purpose</u>
§ 945.2	<u>Definitions</u>
§ 945.3	<u>Timber Harvest Prescriptions</u>
§ 945.4	<u>Hours of Operation</u>
§ 945.5	<u>Exemption and Emergency Notice Operations</u>

PUBLIC HEARING

The Board will hold a public hearing starting at 1:00 p.m. on Thursday, July 13, 2000, at the Ukiah Valley Conference Center, 200 South School Street, Ukiah, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m. on Monday, July 10, 2000. The Board will consider only written comments received at the Board office by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

All written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Dennis O. Hall
Regulations Coordinator
1416 Ninth Street
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand-delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 Ninth Street
Sacramento, CA

AUTHORITY AND REFERENCE

Public Resources Code (PRC) §§ 4551 and 4553 authorize the Board to adopt, review, and revise such rules and regulations as it determines are reasonable necessary to enable it to implement, interpret, or make specific section 4516.5 *et al* of the Public Resources Code under Division 4, Chapter 8 pertaining to the Z'berg-Nejedly Forest Practice Act of 1973 (ref. PRC § 4511).

Pursuant to PRC § 4516.5(b), counties are allowed to recommend additional rules regarding the contents of timber harvesting plans and the conduct of timber operations. The Board shall, within 180 days after receiving recommended rules from a county, adopt rules consistent with the recommendation if they are both of the following:

1. Consistent with the intent and purpose of the Forest Practice Act.
2. Necessary to protect needs and conditions of the county.

PRC § 4551 authorizes the Board to adopt rules and regulations for the continuous growing and harvesting of trees.

PRC § 4553 authorizes the Board to review and revise regulations. The Board shall consult with, and carefully evaluate the recommendations of all interested parties.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

PRC § 4516.5 allows individual counties to recommend that the Board adopt additional rules for the content of timber harvesting plans and the conduct of timber operations to take account of local needs. The counties of Santa Clara, Santa Cruz, Marin, and San Mateo have exercised this option and have had special rules since 1984.

The County of Lake presented the following amendments to the existing Forest Practice Rules, which the Board is proposing for adoption:

§ 945 Lake County Rules

Existing Forest Practice Rules provide a broad range of alternative practices that may be considered in development of a timber harvesting proposal. Lake County developed the Scenic Combining District as a zone within the Lake County General Plan, which provides for the identification of areas adjacent to public roads that have important aesthetic values. In January 2000, Lake County adopted an ordinance prohibiting timber operations on lands within the Scenic Combining District that are not zoned Timber Production Zone (TPZ). The County is proposing that the Board of Forestry and Fire Protection adopt regulations that provide limitations to timber operations consistent with the original intent of designation of the Scenic Combining District.

§ 945.1 Statement of Purpose

Existing rules require consideration of effects on the environment a timber operation may have, including visual impacts. Lake County developed the Scenic Combining District as a zone within the Lake County General Plan, which provides for the identification of areas adjacent to public roads that have important aesthetic values. In January 2000, Lake County adopted an ordinance prohibiting timber operations on lands within the Scenic Combining District that are not zoned Timber Production Zone (TPZ). The County is proposing that the Board of Forestry and Fire Protection adopt regulations that provide limitations to timber operations consistent with the original intent of designation of the Scenic Combining District. The County would like to provide the opportunity for timber harvesting within the District and proposes these rules, which, if adopted, replace the requirements of the County ordinance.

The purpose of the Lake County rules is to assure that the aesthetic values within the Scenic Combining District are identified and protected in planning and conducting timber operations. This will be achieved through direction to Registered Professional Foresters who prepare Timber Harvesting Plans, Nonindustrial Timber Management Plans, Modified Timber Harvesting Plans and Program Timber Harvesting Plans; direction to Licensed Timber Operators conducting timber operations; and direction to the Department in its review and inspection of plans.

§ 945.2 Definitions

Existing Forest Practice Rules do not include any description of the term "Scenic Combining District".

The proposed rule describes the Scenic Combining District as a zone of variable width near both county and state roads. The Scenic Combining District is administered by Lake County. The definition provides notice to interested persons, including landowners, RPFs, and LTOs, how the width is measured. It is measured from the edge of the

roadway. The rule also provides the contact within the County, the Community Development Department of Lake County, where an area may be specifically identified as being within the District.

§ 945.3 **Timber Harvest Prescriptions**

Current rules provide a list of various silvicultural methods and associated stocking requirements that may be used in timber harvesting. These include both even-age and uneven-age methods. There are no specific limitations to removal of hardwoods other than within watercourse and lake protection zones. There are no specific rules addressing visual screening of logging roads. Reentry on a parcel after harvesting, with the exception of areas adjacent to clear cuts, can be done at any time.

The proposed rule establishes that the selection method of harvesting, an uneven-age silvicultural method is the only method that may be used in the Scenic Combining District. The rule excludes the use of the group selection method. The rule also provides that logging roads, skid trails, and landings must be screened to the extent feasible to maintain aesthetic values. A minimum of 25% of the preharvest hardwood stand must be retained, again for aesthetic values. The rule also provides that, with certain exceptions, there can be no harvest in the same area for at least ten years following completion of operations in an area.

§ 945.4 **Hours of Operation**

Current rules provide no limitations on time of day on what days timber operations may proceed.

This rule proposes to limit timber operations, when using power equipment, within 300 feet of a dwelling to the hours between 7:00 a.m. and 7:00 p.m. Such operations are also prohibited on Saturdays, Sundays, and on nationally recognized holidays. Exceptions may be granted if the occupant of the house will not be disturbed by the operation.

§ 945.5 **Exempt and Emergency Notice Operations**

Current rules provide for timber operations that are exempt from the necessity to file a Timber Harvesting Plan if those operations conform to certain standards. The nature of these operations is limited by certain standards to assure no significant impact on the environment. Emergency Notice operations are provided in current rules to allow rapid response to situations that require immediate removal of timber to avoid waste or loss. Emergency timber removal is typically necessary after wildfire, insect infestations, or other natural disasters. Conversion exemptions are typically used for clearing a forested area for home construction or other minor area land use change.

The proposed rule provides for the continued use of Exemptions and Emergency Notices, however, such operations are to take into consideration the limitations of the county rules

affecting silvicultural method, road screening, hardwood retention, and hours of operation, when such considerations are feasible.

DISCLOSURES REGARDING THE PROPOSED ACTION

Based on information supplied primarily by Lake County, the Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known. The County has not identified any significant additional costs or savings.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: The rule proposal will affect businesses and small business related to the timber industry by increasing the cost for timber operations. The cost of preparing a THP submittal for plans within the immediately affected area will increase due to an increase in RPF involvement in marking timber prior to harvest and in locating the boundaries of the Scenic Combining District. Limitations on hours of operations may increase logging costs slightly by extending the amount of time equipment is committed to a given area.

The County has indicated that no significant long-term adverse economic impacts are expected from the proposed amendments. Short-term economic adjustments made now will assure long-term, sustainable timber harvesting into the future, and provide for a more even flow of timber products from Lake County. Currently, no harvesting can occur in the affected areas. Therefore, the increased cost is based upon a comparison of costs for areas where harvesting is allowed. The increased revenue generated from harvest in areas currently restricted is expected to offset the predicted costs.

(Note: cost estimates for the individual rules are presented in the *Initial Statement of Reasons*.)

- Potential cost impact on private persons or directly affected businesses: The rule proposal will potentially affect private persons and businesses with interests in the timber production industry by increasing the cost for timber operations. The cost of

preparing a THP submittal will increase due to an increase in RPF involvement in marking timber prior to harvest and in locating the boundaries of the Scenic Combining District. Limitations on hours of operations may increase logging costs slightly by extending the amount of time equipment is committed to a given area.

Currently, no harvesting can occur in the affected areas. Therefore, the increased cost is based upon a comparison of costs for areas where harvesting is allowed. The increased revenue generated from harvest in areas currently restricted is expected to offset the predicted costs.

(Note: cost estimates for the individual rules are similar to those referenced above and are presented in the *Initial Statement of Reasons*.)

- Significant effect on housing costs: None are known.
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

PLAIN ENGLISH DETERMINATION AND OVERVIEW

Small Business Determination

The Board has determined that the proposed regulations will have a minor effect on small businesses.

Plain English Policy Overview

These proposed changes to the Forest Practice Rules are in response to a recommendation from Lake County. The rural population in Lake County is increasing. Many of these newer residents believe that timber harvesting is not compatible with the rural lifestyle they are seeking. They have expressed this concern to County officials. In response to public concern, the Lake County Board of Supervisors (BOS) has taken several actions in this regard. These proposed rules were adopted by the BOS on January 26, 2000.

§ 945 Lake County Rules

This rule establishes that the subsections identified within 14 CCR §945 apply to Lake County and are applied in addition to the Forest Practice Rules adopted by the Board for general statewide or Northern Forest District application.

§ 945.1

Statement of Purpose

This rule provides a general overview of the purpose of the rules. The rules are to apply within the Scenic Combining District of Lake County. The rules are to provide guidance to Registered Professional Foresters when they prepare plans for harvesting timber in the Scenic Combining District. The rules provide guidance to Licensed Timber Operators when they are conducting timber harvest operations within the Scenic Combining District. The rules provide the Department direction for review, approval, and inspection of timber operations in the Scenic Combining District.

§ 945.2

Definitions

"Scenic Combining District" is defined as variable width areas, adjacent to county and state maintained roads, that are identified by the County as part of the Scenic Combining District. The District is administered by the County of Lake.

The regulation also establishes that the width is measured from the edge of the roadway and is identified and mapped by the County of Lake.

§ 945.3

Timber Harvest Prescriptions

This proposed rule provides the guidelines under which timber operations must be conducted within the Scenic Combining District.

Subsection (a) provides that the selection method of uneven-aged regeneration is the only method to be used for timber harvest operations in the Scenic Combining District. The rule excludes the use of the group selection method of uneven-aged regeneration.

Subsection (a)(1) requires that a plan for timber harvesting operations include a map clearly identifying the area that is within the Scenic Combining District.

Subsection (a)(2) requires that an RPF, or a person under an RPF's supervision, mark all trees to be harvested within the Scenic Combining District prior to preharvest inspection.

Subsection (a)(3) establishes specific minimum basal area retention standards for post-harvest stocking.

Subsection (a)(4) (A) through (C) establishes specific minimum tree retention standards for post-harvest stocking based upon tree size and location within the Scenic Combining District.

Subsection (b) requires that logging roads, tractor roads, and skid trails for timber operations within the Scenic Combining District be screened from view from the public road.

Subsection (c) requires that at least 25% of the hardwoods on the logging area before harvest be retained.

Subsection (d) requires that at least 10 years pass on an area harvested before another timber operation may be approved. The rule excludes timber operations necessary for emergencies as defined in the Board rules and for exemptions for conversions approved by the County.

§ 945.4 Hours of Operation

The rule restricts timber operations, involving the use of power equipment, that are within the Scenic Combining District and within 300 feet of an occupied dwelling , are limited to the hours between 7:00 a.m. and 7:00 p.m. In addition, such operations may not occur on Saturdays, Sundays, and nationally designated holidays.

§ 945.5 Exemption and Emergency Notice Operations

This rule provides that timber operations within the Scenic Combining District that are subject to Exemptions, Conversion Exemptions, and Emergency Notices, may be conducted within the Scenic Combining District. For such operations, the rule requires application of the limitations relating to silvicultural method, road screening, hardwood retention, and hours of operations when it is feasible to do so.

Availability of the Text in Plain English

According to Government Code section 11346.2, (a)(1) an agency that adopts a regulation that affects small businesses must draft the regulation in plain English as defined in 11342(e). The Board has attempted to draft the regulations in plain English whenever possible, and non-familiar language is defined within the regulations. However, the Board has determined that it is not feasible to fully draft the regulations in plain English due to the technical nature of the regulations. Therefore, a non-controlling plain English summary is available from the agency contact person named in the notice.

To facilitate review, and provide for meaningful public participation in the rulemaking process, the *Informative Digest/Plain English Overview* for this notice and any future notices pertaining to the rule section changes referenced in this notice shall constitute the non-controlling plain English summary of the regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(12), the Board must determine that no alternative it considers would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board has determined that the proposed regulations may impact businesses. However, the Board has not identified any alternatives that would lessen any adverse impact on businesses at this time. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, or during the written comment period. Submissions may include the following considerations: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses, (ii) Consolidation or simplification of compliance and reporting requirements for businesses, (iii) The use of performance standards rather than prescriptive standards, or (iv) Exemption or partial exemption from regulatory requirements for businesses.

CONTACT PERSON

Questions about the proposed action, or requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, and modified text of the regulations; may be directed to:

Board of Forestry and Fire Protection
Attn: Dennis O. Hall
Regulations Coordinator
1416 Ninth Street
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418 or,
(916) 653-8007

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. Additionally, the Board maintains electronic versions of the *Notice of Proposed Rulemaking*, the *Initial Statement of Reasons*, and the *Proposed Rule Language* on the Board's web site:

http://www.fire.ca.gov/bof/board/board_proposed_rule_packages.html

As of this date, this notice is published in the *Notice Register*.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Dennis O. Hall
Regulations Coordinator
Board of Forestry and Fire Protection

doh: 5-16-2000
File: 45 Day Notice